

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 73-1323

07744

In the Matter of)
)
Amendment of Part 73 of the Commission's)
Rules to provide a one-hour advancement)
in the sign-on times of daytime AM broad-) Docket No. 19902
cast stations to recoup the morning hour)
lost by the enactment of year-around Day-)
light Saving Time.)

NOTICE OF INQUIRY AND PROPOSED RULE MAKING

Adopted: December 18, 1973; Released: December 20, 1973

By the Commission:

1. By Public Law approved December 15, 1973, and effective January 6, 1974 (PL 93-182), Daylight Saving (advanced) time will be observed throughout most of the nation, on a year-around basis, through the last Sunday of April, 1975. This legislation, adopted as an energy conservation measure, amends the Uniform Time Act of 1966, under which most of the country heretofore observed advanced time for only six months each year.

2. The adoption of year-around advanced time will affect the early morning operations of the approximately 2274 daytime stations in the United States, and particularly those 624 daytimers not holding pre-sunrise service authorizations (PSA's). Of this 624, 346 are ineligible for PSA's under current regulations. Another 278 are technically eligible for PSA's but have not applied --in most cases because the pre-sunrise operating benefits available to them under present regulations are highly marginal in terms of permissible sign-on times and power levels. Under the new legislation, and absent remedial action by the Commission, the sign-on times for these 624 stations, and for Class II daytimers generally, would be delayed a full hour in relation to community clock time during the October-April portion of the year. For example, a 7:30 a.m. sign-on in January will become an 8:30 a.m. advanced-time sign-on. Revenue losses from loss of the "drive-time audience may adversely affect the financial viability of an undetermined number of daytime stations.

3. In recognition of this problem, the Congress has, in section 6 of PL 93-182, provided as follows:

Sec. 6. Notwithstanding any other law or any regulation issued under any such law, the Federal Communications Commission shall, consistent with any existing treaty or other agreement, make such adjustment by general rules, or by interim action pending such general rules, with respect to hours of operation of daytime standard amplitude modulation broadcast stations, as may be consistent

with the public's interest in receiving interference-free service. Such general rules, or interim action, may include variances with respect to operating power and other technical operating characteristics. Subsequent to the adoption of such general rules, they may be varied with respect to particular stations and areas because of the exigencies in each case.

By companion Order released today in this proceeding, we have attempted to provide the interim relief contemplated by this legislation pending the completion of general rule making and the outcome of negotiations with foreign governments concerning stations presently precluded, by foreign clear channel protection requirements, from obtaining the one-hour advancement.

4. The pre-sunrise operating benefits obtainable under present rules are an outgrowth of three major rule making proceedings and companion international agreements reached with Canada and Mexico over the past six years. Report and Order in Docket No. 14419, 8 FCC 2d 698 (1967); First Report and Order in Docket No. 18023, 14 FCC 2d 393 (1968); Report and Order in Docket Nos. 17562, 18023, and 18036 (1969); 1967 agreement with Canada concerning pre-sunrise transmission in the standard broadcast band (TIAS-6268); and 1970 agreement with Mexico concerning pre-sunrise transmission in the standard broadcast band (TIAS-7021). In general terms, the pre-sunrise operating benefits for daytimers which have resulted from these proceedings and agreements are as follows: Of the 1650 daytime stations holding PSA's, most are Class III stations assigned to the 41 regional channels shared with a lesser number of fulltime stations. Their PSA's permit a 6:00 a.m. local time sign-on, with a power of 500 watts (or less when necessary to meet foreign station protection requirements). A substantial (but lesser) number of daytimers holding PSA's are assigned to U.S. and foreign clear channels. Their sign-on times are regulated by sunrise times at the co-channel dominant stations to the east, with power reduced to afford interference protection to the co-channel station(s) to the west. In no event does a PSA permit a sign-on time earlier than 6:00 a.m., local time, or an operating power in excess of 500 watts. Because of the added time and power limitations normally applying to daytimers assigned to clear channels, they are more seriously affected by the new legislation than are the daytimers on regional channels.

5. The problem of greatest urgency is the status of the 346 daytimers currently ineligible for pre-sunrise operating privileges in any form. These include Class II stations assigned to Canadian and Bahamian I-A clear channels; Class II stations assigned to U.S. I-A clear channels and located east of the dominant station; Class II stations located within or near the 0.5 mV/m 50% skywave contours of co-channel U.S. I-B clear channel stations; and Class II stations so located that they cannot meet foreign co-channel protection requirements.

6. The majority of these "ineligibles" (243) are assigned to the seven Canadian and one Bahamian I-A clear channels: 540 kHz, 690 kHz, 740 kHz, 860 kHz, 990 kHz, 1010 kHz, 1540 kHz, and 1580 kHz. For the time being, and pending the outcome of international negotiations being initiated at this time, we are unable to offer any relief to licensees in this particular category. While we are keenly aware of the economic and competitive dislocations involved, these stations will, until further order of the Commission, be required to continue to observe the standard (non-advanced) sign-on times presently specified in their licenses for each month of the year.

7. Most of the remaining 103 "ineligibles" are Class II daytimers assigned to frequencies on which the United States has I-A and I-B clear channel priorities. As to stations on these channels, it is possible to grant relief, where none now exists, without further negotiations with foreign governments. This has been done on an interim, reduced-power basis in the companion Order released today in this proceeding. (These stations are presently ineligible for PSA's either because they are located within or near the 0.5 mV/m 50% skywave contour of a co-channel Class I-B clear channel station, or are located east of a co-channel I-A, the latter being protected by exclusivity of assignment rather than by defined service contours).

8. It is apparent that earlier sign-on times at Class II daytimers on these clear channels will result in skywave interference to the dominant station assignments. This will be true whether the interference is calculated under the "second hour" curves normally used in determining nighttime interference, or under diurnal curves which show less interference impact than conventional nighttime computations. Whether these losses of areas and populations to interference should be regarded as serious depends on how many rural listeners presently rely on the clear channel services available to them and the importance attached to those services. We have no recent information concerning the listening habits of rural residents in this regard. In any event, whatever skywave interference may result from new co-channel Class II operations during the early morning hours will lessen with the approach of sunrise. Moreover, it will be minimized by the power ceilings proposed in paragraph 9, infra.

9. In view of the overriding objectives of PL 93-182, we have tentatively determined that a new class of pre-sunrise service authorization should be created, to be known as "temporary pre-sunrise service authorizations" (TPSA's). A TPSA, if granted, would provide the one-hour advancement in sign-on times contemplated by Congress. It would be issued to PSA holders and non-PSA holders alike, except that persons eligible for a PSA would be required to obtain one as a condition precedent to obtaining a TPSA. Class III PSA-holders assigned to regional channels, as well as Class II PSA-holders assigned to Mexican I-A clear channels, may already, under section 73.99 of the rules and the terms of their PSA's, commence operation as early as 6:00 a.m. local time. Hence, there would be no need for stations in these two categories to apply for TPSA's. Requests for TPSA's filed by other Class II daytimers would be processed under amendments to the existing PSA rule (section 73.99), as follows:

* * * * *

- (j) During the effectiveness of national legislation requiring a one-hour time advancement between the last Sunday of October and the last Sunday of April, licensees and permittees of Class II daytime stations, except those stations assigned to Canadian and Bahamian I-A clear channels or whose sign-on times are regulated by sunrise times at foreign I-B clear channel stations to the east, may request, by letter, a temporary pre-sunrise service authorization (TPSA). If granted, the TPSA shall specify a one-hour advancement in the regularly licensed or PSA sign-on times, as appropriate, and shall be subject to the following requirements and limitations:
- (1) The starting time shall be no earlier than 6:00 a.m., local time.
 - (2) For TPSA-holders ineligible for a PSA, the operating power shall not exceed 50 watts: Provided, That upon a showing that the need for the extended service outweighs the interference to the clear channel stations concerned, operating powers of up to 100 watts may be authorized.
 - (3) For TPSA-holders holding PSA's, the operating power shall correspond to that authorized in the PSA.
 - (4) No request for a TPSA shall be granted to a licensee or permittee eligible for, but not holding, a PSA.
 - (5) TPSA's issued under the provisions of this paragraph shall, up to operating powers of 50 watts, be granted without regard to co-channel skywave interference caused to Class I-A, Class I-B, and Class II fulltime co-channel stations in the United States.
 - (6) Foreign nighttime interference protection requirements, as defined in international agreements to which the United States is a party, shall be observed.
 - (7) Any request for a TPSA shall describe the method whereby the power reduction will be achieved, shall identify foreign fulltime stations (if any) on the channel, and shall include calculations to establish that operating as proposed, no objectionable interference to foreign stations will result.
 - (8) Authorizations issued under this paragraph shall confer no interference protection on the holders thereof, and shall otherwise comply with the provisions of paragraphs (e), (f), (g), (h), and (i) of this section.

10. We invite comments on the specific proposal outlined above, together with the following related matters:

- (a) A substantial number of daytime AM licensees and permittees have co-owned, unlimited-time FM broadcast stations assigned to the same or nearby communities. In view of their present ability to render an early morning service in the FM band, should they be eligible for TPSA's on the same footing as daytimers with no FM affiliation?
- (b) There are 52 daytime stations holding PSA's whose pre-sunrise powers are limited to less than 50 watts in order to afford 0.5 mV/m 50% skywave protection to U.S. Class I-B clear channel stations.* In addition, there are 105 more daytimers on these channels which are restricted as to hours only; i.e., with permitted sign-on times delayed beyond 6:00 a.m. Finally, there are more than 275 daytimers technically eligible for PSA's but which have never applied. Analysis of the latter group shows that approximately half, if they applied, would be limited to PSA operating powers of less than 10 watts and/or significant restrictions as to time. The question thus presented is whether an effort should be made in this proceeding to place these 432 stations on the same power footing as presently ineligible stations which, presumably, will be applying for TPSA's. The comments of interested parties on this aspect of the problem are requested.
- (c) Fulltime stations (including 261 fulltimers presently holding PSA's which provide an optional mode of operation during the pre-sunrise hours) are beyond the scope of the interim relief intended by Congress. We recognize, however, that fulltime stations (along with specified hours stations) will be required to continue pattern-shifting at the non-advanced times specified in their station licenses. Depending on the severity of nighttime pattern restrictions, some of these stations could be disadvantaged during the pre-sunrise hours vis-a-vis daytimers in the same market holding PSA's and/or TPSA's. We also recognize that any effort to advance pattern-shifting times at fulltime and specified hours stations (where such advancement involves licensed modes rather than PSA facilities) might well create hearing rights on behalf

* Fifty (50) of these stations, because of their geographic relationship with their co-channel dominant stations, are also seriously limited as to sign-on times.

of other fulltimers on the same channels, and would raise serious questions under definitions of daytime and nighttime operation as set forth in the 1950 North American Regional Broadcasting Agreement (NARBA, TIAS-4460) and the 1970 U.S.-Mexican standard broadcasting agreement (TIAS-7021). The comments of interested parties are nonetheless invited.

11. Authority for institution of this proceeding, and for adoption of rules concerning the matters involved, is contained in sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended.

12. Pursuant to applicable procedures set forth in section 1.415 of the Commission's rules, interested persons may file comments on or before February 20, 1974. and reply comments on or before March 22, 1974. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding.

13. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

14. In accordance with the provisions of section 1.419 of the rules, an original and 14 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission. All filings made in this proceeding will be made available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION

Vincent J. Mullins
Secretary